1948.

K — File No. O. Money Lende

48

Legal DEPARTMENT

A BRANCH

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Subject:—

Opinions under the

Bombay Money Lenders

P-39

E

Act, 1946.

File No. O. Money-Lenders

Std. Sectt. Slip #1 B e.

48 ..... 102-A

CONTENTS.

Legal Department File No.0. Money Lenders/48.

Sr. No.	R.I.No. / O.No.	Subject	Pages.
		Opinions under the Bombay Money Lenders Act, 1946.	
1.	1473 11.2.48.	Questions 1). whether a money-lender desiring to carry on business of money-lending in the whole district is required to make separate applications to all the Asstt. Registrars in the district on payment of the prescribed fee, and 2). whether a Registrar of a Distt. can issue a licence for an area outside his district where the applicant does the business of money-lending.	1-2.
2.	1360 9.2.48.	Question whether the Act applies to transactions made by villagers "Khavoti Kothis" run by private unregistered village-caste panchayat and also to transactions made by the land lords.	3-4 5-6.
3.	69-Confl. 7-1-48	Questions 1). whether a company which is not a money-lender according to sec 2(10) of the Act, but the loans advanced by which are not included in the exceptions made in sec 2(9) is governed by the Act. 2). Whether individuals who purchase Govt. securities or loans issued by local bodies, will be classed as money-lenders and required to take out a licence; and 3). whether a person who desired to carry on business in more than one area is required to have separate licences for each area by paying separate fees.	5-12 ~~9-14.~~
4.	1719 20.2.48	Question whether charity or temple trusts and trustees managing such institutions or funds are required to take licences under the Act, in respect of their dealings including advances on loans or investments, etc.	13-14 ~~15-16.~~
5.	2134 31-3-48.	The setting up of some agency at headquarters or in districts to guide and tender legal advice to public in respect of Acts and orders issued by Govt.	15-16. ~~16-19.~~

CONTENTS.

Legal Department File No,0. Money-Lenders/48.

Sr. No.	R.I.No. /, C.No.	Subject	Pages.
6.	2783 20.3.48.	Sec 5. The granting of loans to _____ ~~af~~ against provident fund established by the commonwealth Assurance Co. Question whether trustees of the ~~fu~~ fund are required to take a licence under sec-5.	17-18 ~~19-20.~~
7.	2697 18.3.48.	The court-fees on applications for licenses, appeals, etc. sec 6 of the Bombay Money-lending Act, 1947.	
8.	4441 7.5.48	Questions 1). whether a money-lender can say that he will lend only for a particular term as a matter of general money-lending business or matter of individual contract. 2). If he does so and loan is borrowed (with or without security for that particular term, can the borrower while returning the loan before the stipulated period claim proportionate rebate of interest as a matter of general law as under sec.25(2). 3). Is there anything in the Money lenders Act which would prevent its evasion by such device.	
9.	6884 23-7-48.	Question whether persons authorised to advance loand to debtors under section 54 of the Bombay Agricultural Debtors Relief Act, 1947 will be claimed as money-lenders and be required to take out a licence.	27-28 ~~29-30~~.

S.T./19.8.56. S.C.

CONTENTS

Legal Department File No.O. Money Lenders/'48.

Sr. No.	R.I.No. /O.No.	Subject	Pages.
10.	7633 12.8.48.	Questions 1). whether the licence fee paid by the applicants intending to carry on the business of money-lending can be refunded to them on their withdrawing the applications before the licence is granted; and 2). Whether the applications for any such refunds can be refused.	29-30.
11.	8034 23.9.48	Rule 4(3) of the Money-lenders Rules, 1942. sec.139 Civil Procedure Code Questions 1). Whether an affidavit made before the Nazir of the Distt.(or subordinate) Court or Nazir, High Court, could be accepted as valid; 2). Whether the affidavit referred to in rule 4(3) should be in accordance with rule 1 of order XIX of the Civ. P.C. or a statement in lieu of the applicant on solemn affirmation would serve the purpose; 3). Whether stamp duty and attestation fee, if any should be charged for such affidavits.	31-36.
12.	521-Confl. 19.11.48.	Re: C.C.R.D., No.8770/45 dt. 18.11.48. The penal action under the Act.	37-38.
13.	10642 13-11-48.	Question regarding raising the attachment by moving the court in a case where the salary is less than Rs.100/-. Sec.60(1) C.P.C.	39-40.

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S.I./19.5.56. 5c.

1915

The following questions are raised for the consideration of the Remembrancer of Legal Affairs:-

(1) Whether a money-lender desiring to carry on business of money-lending in the whole district is required to make separate applications to all the Assistant Registrars in the district on payment of the prescribed fee; and

(2) Whether a Registrar of a district can issue a licence for an area outside his district where the applicant does the business of money-lending.

As regards the first question, attention is invited to R.L.A's recent opinion No.69-Confl., dated the 7th February 1948.

As regards the second question, under section 7 read with section 3, the licensing authority is the Registrar who can grant a licence to an applicant only for the whole area over which he has jurisdiction or any part thereof. It is thus clear that a Registrar has no power to grant a licence for an area outside his territorial jurisdiction.

sd/- P.M.Iad/10.2

Remembrancer of Legal Affairs.

U.R. to R.D., No.1473, dated the 11th February 1948.

S.I./16.5.56. 4c.

Unregistered Village Caste Panchayats.

Bombay Money Lenders Act, 1947.

The view taken by the D.S., R.D. is correct. Unregistered Village Caste Panchayats, being unincorporated bodies of individuals, would be governed by the Bombay Money Lenders Act, 1947 provided they carry on the business of making advances in grain as stated by the Honorary Secretary of the Thana District Congress Committee in his letter at p.1 ante.

Sd- P.H.Lad/7.2

Remembrancer of Legal Affairs.

U.R. to R.D., No.1360, dated the 9th February 1948.

S.I./16.5.56. 4c.

The following questions are raised for the consideration of the R.L.A.-

1). Whether a company, which is not a money-lender according to section 2(10) of the Bombay Money-lenders Act, 1946, but the loans advanced by which are not included in the exceptions made in section 2(9), is governed by the Bombay Money-lenders Act;

2). Whether individuals, who purchase Government securities or loans issued by local bodies, will be classed as money-lenders and required to take out a license; and

3). Whether a person who desires to carry on business in more than one area of an Assistant Registrar is required to make as many applications as the areas within which he would do his money-lending business and to pay license fee of Rs.5/- separately for each license?

Question No.1. - Section 5 of the Bombay Money-lenders Act, 1947, provides:

> "No money-lender shall carry on business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence".

It is clear from this provision that a money-lender who desires to carry on the business of money-lending must obtain a license. That is, therefore, necessary to decide whether a company registered under the Indian Companies Act, is required to take a licence under section 5 is (1) whether it is a money-lender and (2) whether it carries on the business of money-lending. The expression "money-lender" as defined in section 2(10) does not include an incorporated company registrred under the Indian companies Act. Consequently, a company registered under the Indian Companies Act is not a money-lender. "Business of money-lending" as defined in section 2(2) means the business of advancing loans whether or not in connection with or in addition to any other business. The term "loan" as defined in section 2(9) means an advance at interest by way of credit, whether of money or in kind, but does not include those mentioned in sub-clauses (a) to(g). Loans advanced by a company do not fall within any of the exceptions mentioned in sub-clauses (a) to (g).

Consequently such loans are loans within the meaning of section 2(9) and the company can be deemed to be doing money-lending business within the meaning of section 2(8). However, as stated above, a company is not a money-lender within the meaning of section 2(10). One of the essentials required by section 5, being not complied with, a company will not be required to take a license under the Bombay Money-lenders Act although it is carrying on the business of money-lending. It is, ~~[illegible]~~ therefore, apparent that the Bombay Money-lenders Act will not apply to a company registered under the Indian Companies Act though it is carrying on the business of money-lending. The intention of the legislature in excluding companies registered under the Indian Companies Act from the operation of the Bombay Money-lenders Act appears to be that they should be governed by the provisions of the companies Act itself, which provides sufficient restrictions to guarantee honest dealing. Probably this is based on the provisions of the English Money-lenders Act from which bodies corporate have been exempted. (see Halsbury's Vol23, pages 182-183). The view taken by R.D. is not correct.

Question No.2.- The main question for consideration is whether investment in Government securities or debentures issued by local bodies could be loans within the meaning section 2(9) of the Bombay Money-lenders Act. "Loan" as defined therein means an advance at interest by way of credit whether of money or in kind, but does not include those mentioned in sub-clauses (a) to (g). Neither Government securities nor debentures issued by the local authorities fall within any of the clauses (a) to (g). Government securities are governed by the Indian Securities Act, 1920. "Government Security" as defined in that Act means promissory notes (including treasury bills), bearer bonds and all other securities issued by the Central Government of by any Provincial Government in respect of any loan contracted either before or after the

passing of this Act, but does not include a currency-note. Government securities being in respect of loans advanced to Government are loans within the meaning of section 2(9) of the Bombay Money-lenders Act. Similarly the debentures issued by the local authorities are governed by the Local Authorities Loans Act, 1914, and they are also in respect of loans. (see section 4(1). These are also loans within the meaning of section 2(9) of the Bombay Money-lenders Act. The question whether or not purchasers of Government securities or debentures of local authorities will be required to obtain a licence under the Bombay Money-lenders Act would depend upon whether they do so in pursuance of their business of money-lending. "Business of money-lending" as defined in section 2(2) means the business of advancing loans whether or not in connection with or in addition to any other business. In order to establish that a person is carrying on such a business it is not sufficient to prove that he occasionally lends money at a remunerating rate of interest; it is necessary to prove some degree of system and continuity in his money-lending transactions. (see Halbury's Vol.24, page 181). Consequently occasional purchasers of Government securities or debentures issued by local authorities would not be required to take a licence under the Bombay Money-lenders Act; but those who do such purchasing of securities or debentures as a sort of money-lending business would be required to take a licence under the Bombay Money-lenders Act.

Question No.3.- Under section 6(1) of the Bombay Money-lenders Act an application for a licence is required to be made to the Assistant Registrar of the area within the limits of which he intends to carry on the business of money-lending. If a person wants to carry on the business of money-lending in more than one area for which Assistant Registrars have been appointed, separate applications to such Assistant Registrars will have to be made by him; but on receipt of such application the Assistant Registrar

is required to forward it to the Registrar who, after making such further enquiry, if any, as he deems fit, may grant the applicant a licence in such form and subject to such conditions as may be prescribedon payment in the prescribed manner of a licence fee of Rs.5/- and direct the Assistant Registrar to enter the name of such applicant in the register maintained by him under section 4. It is clear that the licensing authority is the Registrar and it is competent for him to grant a licence to an applicant for the whole area over which he has jurisdiction of any part thereof. ~~If he grants a licence for the whole area over which he has jurisdiction of any part thereof.~~ If he grants a licence for the whole area under his jurisdiction, it is not necessary that the applicant should pay more than Rs.5/- as licence fee even though he may be carrying on business in more than one sub-area under the jurisdiction of an Assistant Registrar. The procedure is not in the least cumbrous as alleged. The licence will have to be registered in each area of the Assistant Registrar, where he desires to carry on business, so that the Assistant Registrar may have a direct supervision over his dealings.

In the linked case no new point is raised.

P.M.Lad/7.2.

Remembrancer of Legal Affairs.

U.R. to R.D. No.69-Confl. dated the 7th February 1948.

S.I./16.6.66. 4c.

The question raised for the consideration of the R.L.A. is whether charity or temple trusts and trustees managing such institutions or funds are required to take licenses under the Bombay Money-Lenders Act, 1946, in respect of their dealings including advances or loans or investments, etc.

2. Section 2(9) of the Bombay Money Lenders Act excludes from the term "loan" a loan to or by or a deposit with any society or association registered

[redacted]

The question raised for the consideration of the R.L.A. is whether charity or temple trusts and trustees managing such institutions or funds are require to take licenses under the Bombay Money-Lenders Act, 1946, in respect of their dealings including advances or loans or investments, etc.

2. Section 2(9) of the Bombay Money Lenders Act excludes from the term "loan" a loan to or by or a deposit with any society or association registered under the Societies Registration Act, 1860, or any other enactment relating to a public religious or charitable object. It follows, therefore, that a charity or temple trust registered under any enactment can claim exemption from the provisions of the Bombay Money Lenders Act in respect of its dealings including advances or loans or investments, etc., provided such trust is a society or association. The charity or temple trusts are required to be registered under the Bombay Public Trusts Registration Act, 1935, the Parsi Public Trusts Registration Act, 1936, or the Mussalman Wakf Act, 1923, as the case may be. Consequently, these trusts would be entitled to exemption from the provisions of the Bombay Money Lenders Act in so far as they are societies or associations.

P.M.Iad/19/2.

Remembrancer of Legal Affairs.

U.R. to R.D. No1719, dated 20th February 1948.

S.I./16.5.56. 4c.

Setting up of some agency at Headquarters or in Districts to guide and tender legal advice to public in respect of Acts and orders issued by Government.

Money Lenders Act, 1947.

This question has been canvassed before; and no practicable solution has been found for the simple reason that it is not part of Government's work, as our legal system is constituted today, to supply legal advice to private individuals in their personal problems. That they must necessarily seek from their own legal practitioners. In so far as the problem is purely theoretical, no legal advice is in fact needed. Problems of policy, as distinguished from problems of interpretation involved in Private disputes, can always be cleared by suitable press notes, which can also be used for explaining the scope or object of an e enactment. In practice, therefore, there is no real need for the machinery H.D. has in view. Under our legal system authoritative interpretation must of necessity be left to courts; and any advice in the construction of statutes emanating from Government agency would not only cause embarrassment but would expose Government to criticism in case it is not upheld by courts. Courts would, besides, frown upon any such machinery on the ground that it would be usurping functions which appropriately belong to them. Once such machinery is set up it would be impossible to limit its scope, and we will literally be flooded with requests for advice on all sorts of questions posed in suitably theoretical garb by parties who in fact would be contemplating immediate legal action of some sort. Finally, L.D. will not be able to cope with this new work. A separate organisation with R.I.A.(Public) at its head would have to be set up. For all these reasons I agree with the view taken by Secretary, H.D.

P.H.Lad/32/3.

Remembrancer of Legal Affairs.

J.R. to H.D.(Poll) No.3124 dated 31st March 1948.

S.I./16.6.56. 4c.

Granting of loans to Members against provident fund established by the Commonwealth Assn. Co. Ltd. Co

Necessity of a licence under Bombay Money-lenders Act, 1946. Sec.5.

A provident fund is established by the Commonwealth Assurance Co. Ltd., Poona, for the benefit of its employees. The fund was recognised by the Commissioner of Income-tax under section 58B(1) of the Indian Income-Tax Act, 1922. Under the rules of the Employees' Provident Fund, the control over the fund vests in the Trustees (see rule 5 and clause(c) of section 58C(1) of the Income-tax Act). Under rule 22 the loans are granted to the members of the fund from the amount standing to the credit of their own account in accordance with the terms and conditions specified in their rules made under the Indian Income-tax Act in this behalf. The amount of the loan granted to a member does not exceed his three months' salary and the amount is recoverable with interest in 24 equal monthly deductions from his salary. The interest recovered is also added to the fund. The question raised for the consideration of the Remembrancer of Legal Affairs is whether the Trustees of the fund will be required to take a licence under section 5 of the Bombay Money-lenders Act, 1946.

2. Under section 5 of the Bombay Money-lenders Act, 1946, no money-lender shall carry on the business of money-lending except in the area for which he has been granted a licence and except in accordance with the terms and conditions of such licence. "Money-lender" as defined in section 2, clause (10) means (i) an individual or (ii) an undivided Hindu family or (iii) a bank or (iv) an unincorporated body of individuals, who or which carries on the business of money-lending in the Province; or has his or its principal place of such business in the Province. The Trustees in whom the

administration of the fund vests in the present case are an unincorporated body of individuals. Under rule 22 of the Provident Fund Rules, it is open to the Trustees to grant a loan to a member. Consequently the Trustees would be deemed to be money-lenders carryin on the business of money-lending within the meaning of section 5. The trustees will have, therefore, to take a licence under the Bombay Money-lenders Act. Provision for such cases may be made in the amendments which are under contemplation.

P.M.Iad/19/3.

Remembrancer of Legal Affairs.

U.R. to R.D., No.2783, dated the 20th March 1948.

S.I./17.5.56. 4c.

Court fee on applications for licenses, appeals, etc.

Bombay Money-lenders Act, 1947- section 6.

Please see papers underlying R.L.A's opinion No.13549 of 31-12-1947, and orders issued by R.D.at p.11 ante. The Registrar General of Money Lenders, Bombay Province, Poona, in his letter dated 29-1-48, has directed the Registrars and Assistant Registrars to recover court fees on applications for licenses, appeals, etc., under the Bombay Money Lenders Act on the lines mentioned below:-

(1) Applications for grant of license under section 6;	Item 1(b) of Sch II to the Court Fees Act.
(2) Applications for cancellation of license under section 12(1);	-do-
(3) Appeals under sec-8(3);	11(b)
(4) Authorisation under rule 4(1).	10(a).

2. As regards application for grant of license under section 6 of the Bombay Money Lenders Act, 1947, R.D. is of the view that such an application would not fall under article 1(b) of Schedule II of the Court-fees Act, 1870. In his opinion No.13539 dated 31-12-47, the R.L.A. has already expressed the view that such an application does not fall under article 1(b) of Schedule II to the Act. No fresh grounds are urged by the Registrar-General to modify this opinion.

3. As regards applications for cancellation of license under section 12(1) of the Act, R.D. is of the view that such application would not also fall under article 1(b) of the Schedule II. This view appears to be correct as the application is not a complaint or charge and the Registrar-General acting under section 12(1) is not a court within the meaning of the first and the second paragraph in Article 1(b) in Schedule II to the Court-fees Act.

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4. As regards appeals under section 8 (3) of the Act, R.D. is of the view that they would fall under article 11(b) of the Schedule II ~~of~~ to the Court-fees Act, Under section 8(3) an appeal lies from an order of the Registrar refusing license under sub-section (1) to the Registrar General, whose decision shall be final. In para.2 of his opinion No.7490, dated 21-7-47, the R.L.A. had already opined that provision regarding stamping of appeal memo. is unnecessary as the levy is already made under the provisions of a separate statute, namely, the Court-fees Act, 1890. The appeal in this case would however, fall under article 11(a) and not 11(b) of Schedule II as the appeal to the Registrar General would be an appeal to an Executive Officer within the meaning of the article. The view taken by the Registrar General and concurred in by R.D. is not correct.

5. The Registrar General is of the view that authorisations under rule 4(1) of the Bombay Money Lenders Rules, 1947, would fall under article 10(a) of Schedule II to the Act. R.D. considers that such authorisation will not fall under the category of a Mukhtarnama and will not be chargeable any fee under article 10(a). Rule 4(1) provides that an application for license shall be delivered at the office of the Assistant Registrar during office hours either personally by the applicant or through an agent duly authorised in writing in this behalf or sent by registered post addressed to the Assistant Registrar. An instrument in writing which authorises a person to act for and on behalf of the person executing it would fall within the meaning of the expression "power-of-attorney" and be liable to stamp duty under Article 48 of Schedule I to the Indian Stamp Act. If, however, a certificated Mukhtar or Pleader is authorised by a person in writing to appear and act on his behalf the instrument would be a Mukhtarnama or Wakalatnama liable to payment of court fee under clause (a) of Article 10 in Schedule II to the

Court-fees Act, 1870. The view taken by R.D. on this point is not correct. (cf. R.L.A's opinion No.3481, dated 10-4-47 and No.13184, dated 20-12-1947).

6. Lastly, R.D. considers that stamp duty as laid down in art.4 of Schedule I to the Stamp Act can be levied on "affidavits" prescribed under rule 4(3) of the Bombay Money Lenders Rules. Rule 4(3) of the said Rules provides that every application shall be accompanied by an affidavit of the applicant that the applicant or any person responsible or proposed to be responsible for the management of his business of money-lending has not knowingly participated in or connived at any fraud or dishonesty in the conduct of or in connection with the business of money lending or been found guilty of an offence under Chapter XVII or section 465, 477 or 477A of Chapter XVIII of the Indian Penal Code. The affidavit made under rule 4(3) would fall under Article 4 of Schedule I to the Indian Stamp Act. The view taken by R.D. in para 3 of its note, at pp.33-36 ante, appears to be correct.

Sd.D.M.Lad/17/3.

Remembrancer of Legal Affairs,

U.R. to R.D. No.2697 dated the 18th March 1948.

S.I./17.5.56. Ag:

The questions raised for the consideration of R.L.A. are:-

(1) Whether a money-lender can say that he will lend only for a particular term as a matter of general money-lending business or matter of individual contract.

(2) If he does so and loan is borrowed (with or without security) for that particular term, can the borrower while returning the loan before the stipulated period claim a proportionate rebate of interest as a matter of general law or under section 25(2) of the Money-lenders Act.

(3) Is there anything in the Money-lenders Act which would prevent its evasion by such device.

Question No.1.- "The contract of loan of money differs from bailment in that the actual money lent is not to be re-delivered by the lender, but an equivalent sum is subsequently to be repaid. It is a simple contract not necessarily requiring writing. In most cases the lender takes an acknowledgment in writing from the borrower and either an I.O.U. or a promissory note, or a bond or deed. If the loan is secured by a covenant in a deed, the simple contract merges in the speciality and the lender can only sue on the covenant; If there is a promissory note, he will during the currency of the note be estopped from suing otherwise than in accordance with its terms; but after it has become due, he can sue on the note, and add a claim for money lent, and the promissory note may be used as evidence in support of of money lent," (see Chitty on Contracts, p.918). It is, therefore, clear that money-lending is a matter of contract between the creditor and debtor and it is open to a creditor to stipulate his own terms as a matter of money-lending business or as a matter of individual contract provided suchtterms are not unconscionable, or are prohibited by any law. It is open to

a money-lender to advance long term loans or short term loans and to stipulate that he would not accept repayment before the loans mature. In 'Eshahuq Molla c. Abdul Bari Halda' (31 Calcutta, 183) it was held that the tender of debt before the due date is not a valid tender and will not prevent interest from running on the loan. This decision implies that a money-lender is not bound to accept repayment of a loan before the due date. There is nothing in the Bombay Money-lenders Act, 1946, prohibiting a money-lender from advancing loans stipulating a fixed period for repayment and providing for payment of interest for the period even though the repayment is made before the debt matures. A stipulation of this kind is not also unconscionable and prohibited under the Indian Contract Act. Consequently this question may be answered in the affirmative.

Question No.2.- As stated above, a money-lender is not bound to accept repayment before the stipulated period, and any tender short of full payment with interest for the period would not be a valid tender. Consequently the debtor would not be entitled to claim any proportionate rebate of interest even though he has offered repayment before the expiry of the stipulated period. The creditor has right to refuse acceptance before the expiry of the period unless full payment including interest for the stipulated period is offered to him. Section 25(1) empowers Government to fix the maximum rate of interest. Sub-section (2) of section 25 provides that notwithstanding anything contained in any law for the time being in force, no agreement between a money-lender and a debtor for payment of interest at rates exceeding the maximum rates fixed by the Provincial Government under sub-section (1) shall be valid and no Court shall in any case to which this Act applies award interest exceeding the said rates.

This provision prohibits charging interest at rates exceeding the maximum rates fixed by the Provincial Government. If the rate of interest stipulted for the loan is within the prescribed limit, section 25(2) shall not be contravened even tho gh the interest charged for the stipulated period results in charging a higher rate when the loan is returned within the stipulted period; for, the creditor might well say that it was open to the debtor to repay money after stipulated period and that he was not bound to accept repayment unless it be for the convenience of the debtor himself. Consequently, neither the general law nor section 25(2) of the Bombay Money-lenders Act can enable the borrower to claim a proportionate rebate of interest in case he has offered repayment before the expiry of the stipulated period.

Question No.5:- Section 29 of the Bombay Money-lenders Act, provided that notwithstanding anything contained in any law for the time being in force, the Court shall, in any suit to which this Act applies, whether heard ex-parte or otherwise -

(a) reopen any transaction, or any account already taken between the parties;

(b) take an account between the parties;

(c) reduce the amount charged to the debtor in respect of any excessive interest;

(d) if on taking accounts it is found that the money lender has received more than what is due to him pass a decree in favour of the debtor in respect of such amount.

Sub-section (1) of section 30 provides for making an application by a debtor at any time to the Court whether the loan to which the suit relates has or has not become payable for taking accounts and for declaring the amount due to the money-lender. Sub-section (2) provides that on receipt of such application, the Court shall cause a notice of the application to be given to the money-lender,

and under sub-section (3) in taking accounts under this section the Court shall follow the provisions of sections 18 to 29. It is clear from these provisions that it is open to a ~~x~~ debtor to apply to the Court for taking accounts and declaring the amount due even before the debt has matured; and on such application being made it would be open to the Court to reduce the amount charged to the debtor in respect of any excessive interest under section 29. Consequently in such cases the proper procedure to be ~~fxx~~ followed would be that the debtor should apply to the Court for taking accounts and the Court would be justified in giving him relief by way of rebate in interest. There is no other provision in the Bombay Money-lenders Act prohibiting a money-lender from stipulating the period of loan and refusing the accept before the expiry of that period and claiming interest for the full stipulated period even though the loan is returned ~~before~~ before the expiry of that period, although the court can grant relief under section 30 ~~xx~~ read with section 29.

P.N.Lad/

Remembrancer of Legal Affairs.

U.R. to R.D. No.4441, dated the 7th May 1948.

S.I./17.6.56. 4c.

Office of the R.L.A.

Bombay Money Lenders Act, 1946. Section 2, cl.(10)

The view taken by Secy. R.D. is correct. A person though authorised to advance loans under section 54(1) of the Bombay Agricultural Debtors Relief Act, 1947, would require a license under the Bombay Money Lenders Act, 1946, as he would be a money lender as defined in clause (10) of section 2.

R.M.Tad/22/7.

Remembrancer of Legal Affairs.

U.R. to R.D. No.6884, dated the 23rd July 1948.

S.I./17.6.56. 4c.

Office of the R.L.A.

Section 15 of the Bombay Money-lenders Act, 1946, provides that no refund of the licence fee can be made, if the licence is suspended or cancelled. But there is no provision for the refund of the licence fee, if the application for licence is withdrawn. A rule can be made for the grant of such refund in suitable cases. Whether and in what cases such refund should be made are matters for the administrative department to consider.

J.N.Dhurandhar/12/8.

Additional Secretary to Government.

U.R. to A.D., No.7633, dated the 12th August 1948.

S.I./17.5.56. 4c.

Rule 4(3) of the Bombay Money Lenders Rules, 1947, provides that every application shall be accompanied by an affidavit of the applicant etc. The questions raised for the consideration of the R.L.A. are:-

1). Whether an affidavit may before the Nazir of the District or Subordinate Court or Nazir, High Court, could be accepted as valid;

2). Whether the affidavit referred to in rule 4(3) should be in accordance with rule 1 of Or. XIX of the Code of Civil Procedure or a statement in writing of the applicant on solemn affirmation would serve the purpose;

3). Whether the stamp duty and attestation fee, if any, should be charged for such affidavits.

2. Section 139 of the Civil Procedure Code whereunder the Nazir of the District or Subordinate Court or Nazir of the High Court are empowered to administer oath to a deponent, who makes an affidavit, applies to affidavits made under the Civil Procedure Code. An affidavit required to accompany an application under rule 4(3) of the Bombay Money Lenders Rules, 1947, would not be an affidavit under the Civil Procedure Code. Consequently section 139 of the Civil Procedure Code will have no application and the Nazir of the District Court or Subordinate Court or Nazir, High Court, will have no power to administer oath to a person making an affidavit under rule 4(3) of the Bombay Money Lenders Rules.

3. "An 'affidavit' is an oath in writing signed by the party deposing, sworn before, and attested by him who hath authority to administer the same. It is a declaration on oath, reduced to writing, affirmed or sworn to by an affiant before some person who has authority to administer oaths."

S.T./17.5.56. 4c.

(Bouvier's Law Dictionary). Affidavits required under rule 4(3) can therefore be made before a person who has authority to administer oath. Under section 4 of the Indian Oaths Act, 1873, all Courts and persons having by'law or consent of parties authorities to receive evidence are authorised to administer oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law. Under section 13 of the Bombay Money lenders Act, 1946, Registrar and Assistant Registrar for the purposes of section 7 and the Registrar General for the purposes of section 12 are vested with powers to enforce the attendance of any person and examining him on oath. An affidavit under rule 4(3) of the Bombay Money Lenders Rules is required to be filed along with the application for consideration under section 7 with respect to the grant of a license to an applicant and the entry in register of his name. Consequently the Registrar and the Assistant Registrar would be entitled to administer oath within the meaning of section 4 of the Indian Oaths Act and affidavits can, therefore be made before them.

4. No particular form of affidavit has been prescribed by any law. Rule 1 of Order XIX of the Civil Procedure Code has no application to affidavits under rule 4(3) of the Bombay Money Lenders Rules. However, it is desirable that the affidavits required by that Rule should as far as possible conform to the form prescribed under rule 45 of the Civil Manual issued by the High Court of Bombay for the guidance of the Civil Courts, Vol.I p.10.

5. As stated by the R.L.A. in his last opinion No.2697 dated 18th March 1946 an affidavit made under rule 4(3) would fall under Art. 4 of Schedule I to the Indian Stamp Act and consequently would be liable to a stamp duty. Whether any fee should be levied for the attestation of affidavits would

be governed by rule 46 of the Civil Manual Vol.1, p.10, provided the affidavits are attested by Judges, Assistant Judges, Magistrates or judicial officers of the corresponding rank. If affidavits attested by such judicial officers are produced before the Registrar and Assistant Registrar under the Bombay Money Lenders Act, they need not trouble themselves about the levy of the fees for such attestation. If, however, the affidavits are presented to them, that is to say, the Registrar and the Assistant Registrar, they cannot demand fees for attesting those affidavits unless and until Government prescribes any fees for such attestation.

P.M.Mad,

Remembrancer of Legal Affairs.

U.R. to R.D., No.9034, dated 23rd September 1948.

S.I./17.5.56. 4c.

Office of the R.L.A.

Mr. Pathan may move the Court to raise the attachment, since his salary being less than Rs.100/- is exempt from attachment under section 60(1), C.P.C.

P.N.Lad/11/11

Remembrancer of Legal Affairs.

U.R. to R.D., No.10642, dated the 13th November 1948.

S.I./17.5.56. 4c.